

Mr. Louis Daniel, Chairman
South Atlantic Fishery Management Council
One Southpark Circle
Charleston, South Carolina 29407

Dear Mr. Daniel:

I am happy to present to you our Draft Operational Guidelines for Development and Implementation of Fishery Management Actions (OGs) and request your assistance in implementing them on a test basis.

This draft was prepared in close conjunction with the Sustainable Fisheries Assistant Regional Administrators, and with input from the Office of Protected Resources, Office of Habitat Conservation, Office of the General Counsel for Fisheries, Office of Law Enforcement, and the regional National Environmental Policy Act (NEPA) Coordinators. My staff also reviewed the approach with regional and Fishery Management Council (Council) staff in regional workshops during 2004, and with the Council Chairs at the April 2004 meeting in Hawaii. In March 2005, we circulated a revised draft for additional internal review through the Policy Directives System review process. Based on these reviews, this draft has been modified to address concerns associated with practicability, resource constraints, and perceived effects on Council autonomy. It has also been modified to include greater detail regarding the Endangered Species Act section 7 consultation process.

Overview of Guidelines:

The philosophy and principles of the draft OGs include cooperation and shared responsibility with Councils, frontloading review, and use of the Magnuson-Stevens Fishery Conservation and Management Act and NEPA processes as a framework for necessary analyses. The draft describes the roles and responsibilities of various offices, and establishes an approach for increasing collaboration through joint planning efforts and Regional Operating Agreements (ROAs). Standards are identified to assess the adequacy of fishery management actions and a model is described for ensuring effective communication and reconciliation of statutory timelines.

The model represents a quality-based, outcome-oriented approach based on the Hazard Analysis Critical Control Point (HACCP) system that will facilitate achievement of our Regulatory

Streamlining Performance goals. It identifies steps in the regulatory process where critical errors may occur that would prevent an action from meeting the standards and requires feedback at those key steps, leaving room for discretion and flexibility in terms of working out particular staffing questions and approaches for complying with stated standards. The narrative defines new terminology used in the model, provides an overview of the key steps in the process, and describes the four key phases of rulemaking. A fundamental feature of the model is the requirement at four steps for an affirmative statement from the Regional Administrator that documentation and process are adequate and complete to proceed with the action. Barring the issuance of such a statement, actions being developed pursuant to the model should not move forward until deficiencies are corrected.

Table 1 is the heart of the model. It sets forth 16 steps and 3 substeps that potentially apply to any fishery management action, and for each step specifies who needs to be involved, what standards apply, what timing factors must be considered, and what, if any, documentation is necessary, along with additional commentary where applicable. Depending on the type of action being prepared (Fishery Management Plan vs. regulatory amendment), the type of NEPA analysis necessary, and the potential for effects on protected species or essential fish habitat, the number of steps that would be applicable could be less than 16. Steps that apply in only limited circumstances are identified. If the approach in the model is followed, the result should be an expedited review and implementation process at the end, with better litigation results and improved decision-making.

Next Steps:

Successful implementation of these guidelines will require continuing collaboration between the Councils and NOAA's National Marine Fisheries Service (NMFS). A key first step is to develop written ROAs that specify agency and Council responsibilities and steps that will be taken to prepare documentation for fisheries conservation and management decisions. I request that you immediately initiate implementation of these draft OGs on a test basis by developing an ROA with your corresponding NMFS regional office.

I also request that you begin utilizing the joint planning process to identify and prioritize upcoming needs and actions and raise issues with national policy implications to NMFS Headquarters for early guidance. I also recommend that, to the extent practicable and on a test basis, you begin applying the model contained in the Draft OGs to new actions being developed. Please be aware that NOAA General Counsel has expressed concern that full implementation of the model may not be possible under current resource constraints.

As we begin to move forward with ROA development and OG implementation, please identify any problem areas that you perceive with the current approach. I want to emphasize that the

Draft OGs are intended to function as a living document that can be modified to address changing needs. We should plan to discuss implementation progress and needs for modifications at the next meeting with Council Chairs.

Sincerely,

William T. Hogarth, Ph.D.
Assistant Administrator
for Fisheries

Enclosure

MEMORANDUM FOR: Office Directors and Regional Administrators

FROM: William T. Hogarth, Ph.D.

SUBJECT: Draft Operational Guidelines

I am happy to present to you our Draft Operational Guidelines for Development and Implementation of Fishery Management Actions (OGs) and request your assistance in implementing them on a test basis, as described below.

Overview of Guidelines:

The philosophy and principles of the draft OGs include cooperation and shared responsibility with Councils, frontloading review, and use of the Magnuson-Stevens Fishery Conservation and Management Act and National Environmental Policy Act (NEPA) processes as a framework for necessary analyses. The draft describes the roles and responsibilities of various offices, and establishes an approach for increasing collaboration through joint planning efforts and Regional Operating Agreements (ROAs). Standards are identified to assess the adequacy of fishery management actions and a model is described for ensuring effective communication and reconciliation of statutory timelines.

The model represents a quality-based, outcome-oriented approach based on the Hazard Analysis Critical Control Point (HACCP) system that will facilitate achievement of our Regulatory Streamlining Program goals. It identifies steps in the regulatory process where critical errors may occur that would prevent an action from meeting the standards and requires feedback at those key steps, leaving room for discretion and flexibility in terms of working out particular staffing questions and approaches for complying with stated standards. The narrative defines new terminology used in the model, provides an overview of the key steps in the process, and describes the four key phases of rulemaking. A fundamental feature of the model is the requirement at four steps for an affirmative statement from the Regional Administrator (RA) that documentation and process are adequate and complete to proceed with the action. Barring the issuance of such a statement, actions being developed pursuant to the model should not move forward until deficiencies are corrected.

Table 1 is the heart of the model. It sets forth 16 steps and 3 substeps that potentially apply to any fishery management action, and for each step specifies who needs to be involved, what

standards apply, what timing factors must be considered, and what, if any, documentation is necessary, along with additional commentary where applicable. Depending on the type of action being prepared (Fishery Management Plan vs. regulatory amendment), the type of NEPA analysis necessary, and the potential for effects on protected species or essential fish habitat, the number of steps that would be applicable could be less than 16. Steps that apply in only limited circumstances are identified. If the approach in the model is followed, the result should be an expedited review and implementation process at the end, with better litigation results and improved decision-making.

Next Steps:

Successful implementation of these guidelines will require continuing cooperation among all NMFS offices that review fishery management actions in addition to collaboration between the Councils and NMFS and with NOAA General Counsel. A key first step is to develop written ROAs that specify agency and Council responsibilities and steps that will be taken to prepare documentation for fisheries conservation and management decisions. I hereby request the RAs to immediately initiate implementation of these draft OGs on a test basis by developing an ROA with your corresponding Council(s), in consultation with the appropriate Regional Attorney. In doing so, please be aware that resource constraints may affect which provisions of an ROA GC can approve and/or implement. The RAs, and Office Directors as applicable, should also begin utilizing the joint planning process to identify and prioritize upcoming needs and actions and raise issues with national policy implications to NMFS Headquarters for early guidance. Finally, I request that you begin applying the model contained in the Draft OGs, to the extent practicable and on a test basis, to new actions being developed. Application of the model will require cooperation from reviewing offices. NOAA General Counsel has expressed concern that full implementation of the model may not be possible under current resource constraints. Implementation on a test basis may occur only to the extent permitted by resource constraints. Consult with the appropriate Regional Attorney prior to undertaking any action utilizing the model or a similar process.

As we begin to move forward with ROA development and OG implementation, please identify any problem areas that you perceive with the current approach. I want to emphasize that the Draft OGs are intended to function as a living document that can be modified to address changing needs. I will follow-up with you to schedule a time to review our initial experiences with the trial implementation of the OGs and to assess the need for revision of the draft.

Attachment